

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

**FOURTH JOINT STATUS REPORT OF MOVANT AMBAC ASSURANCE  
CORPORATION AND RESPONDENTS THE FINANCIAL  
OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, THE  
COMMONWEALTH OF PUERTO RICO, AND THE PUERTO RICO FISCAL  
AGENCY AND FINANCIAL ADVISORY AUTHORITY WITH RESPECT TO  
THE PENSIONS DISCOVERY MOTIONS**

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Movant Ambac Assurance Corporation (“Ambac”) and Respondents The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), The Commonwealth of Puerto Rico (the “Commonwealth”), by and through the Oversight Board as the Commonwealth’s representative pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and together with the Oversight Board and the Commonwealth, the “Respondents”),<sup>2</sup> respectfully submit this joint status report in response to the Court’s October 25, 2019 Order (Dkt. No. 9006).

1. On June 18, 2019, Ambac filed its *Motion To Compel Pensions Discovery* (Dkt. No. 7505) and *Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004* (Dkt. No. 7507) (together, the “Pensions Discovery Motions”).

2. On July 9, 2019, Respondents filed their *Omnibus Opposition to the Pensions Discovery Motions* (Dkt. No. 7895) (“Opposition Brief”).

3. On July 23, 2019, Ambac submitted its reply in further support of the Pensions Discovery Motions (Dkt No. 8230) (“Reply Brief”).

4. The Parties subsequently filed a number of motions seeking to adjourn the hearing on the Pensions Discovery Motions in order to allow the Parties to continue to meet and confer. (*See* Dkt. Nos. 8007, 8271, 8444, 8634). The Court granted these motions. (*See* Dkt Nos. 8017, 8291, 8447, 8638).

5. The Parties submitted joint status reports informing the Court of their progress on August 12, 2019 (Dkt. No. 8445) and September 6, 2019 (Dkt. No. 8633).

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<sup>2</sup> Movant and Respondents are collectively referred to as the “Parties.”

6. On October 23, 2019, Ambac requested additional information regarding the Commonwealth's pension liabilities (the "Supplemental Pensions Requests"). Ambac believes that the Supplemental Pensions Requests (attached hereto as Exhibit A) target specific information needed to better understand the Commonwealth's present and future pension obligations. The Oversight Board believes the Supplemental Pensions Requests are beyond the scope of the pending Pensions Discovery Motions and, in any event, inappropriate at this time as they seek discovery concerning the proposed plan of adjustment for the Commonwealth.

7. On October 25, 2019, the Parties filed their third joint status report (Dkt. No. 8996). At the same time, the Parties jointly filed an urgent motion seeking an order granting an adjournment of the hearing on the Pensions Discovery Motions in order to allow the Parties to continue to meet and confer (Dkt. No. 8997). The Court granted the motion, adjourning the hearing on the Pensions Discovery Motions to the omnibus hearing scheduled for December 11, 2019, and ordering the Parties to submit a fourth joint status report to the Court on the remaining issues for adjudication on or before December 6, 2019 (Dkt. No. 9006).

8. In the time since the Parties filed their third joint status report, the Parties have continued to meet and confer to discuss the status of the collection, review, and production process.

9. With respect to Ambac's requests pertaining to the actuarial analyses of the ERS, TRS, and JRS pension systems (*see* Request Nos. 21, 26, 27), Ambac is in the process of evaluating the adequacy of Milliman's responses to questions posed by the creditors' pensions expert in order to determine whether there are any additional responsive materials that must be produced to satisfy these requests and/or whether it would be productive to schedule a call between Milliman and the creditors' pensions expert to discuss the actuarial analyses.

10. With respect to Ambac's requests pertaining to settlement agreements with the retiree and union groups (*see* Request Nos. 29, 30, 31), the Oversight Board informed Ambac that it has identified a small number of communications that contain factual information responsive to the requests, but that the Retiree Committee objects to production of these materials on the ground of mediation privilege. Ambac disagrees that the exchange of factual information in the course of mediation or settlement negotiations renders such information non-discoverable, and reserves its right to object to the Retiree Committee's claim of privilege.

11. With respect to the Supplemental Pensions Requests, the parties met and conferred on November 13, November 23, and December 3, 2019. On December 3, 2019, counsel for AAFAF represented that AAFAF would produce information responsive to Supplemental Request Nos. 6 and 7, which seek certain bank account statements and other loan documents for the ERS, TRS, and JRS pension systems. AAFAF also agreed to re-produce to Ambac previous productions from the ERS lift stay proceedings, which pertain to the PayGo system. On December 6, 2019, counsel for AAFAF produced the above-referenced materials to Ambac. Ambac is in the process of evaluating the production to determine whether there are any additional responsive materials that must be produced to satisfy these requests.

12. Counsel for the Oversight Board, however, maintains the Supplemental Pensions Requests are both beyond the scope of the pending Pensions Discovery Motions and seek documents and information related to the proposed plan of adjustment and disclosure statement filed by the Oversight Board on September 27, 2019. The Oversight Board maintains that such discovery is inappropriate at this time. While the Oversight Board is willing to discuss any concerns Ambac has regarding the disclosure statement, the Oversight Board nevertheless declines

to produce documents and information pursuant to the Supplemental Pensions Requests at this time.

13. As explained in its motion to strike two Rule 2004 motions and to seek sanctions against Ambac (the “Motion to Strike”) (Dkt. No. 9131), the Oversight Board believes that now is not the proper time for Ambac – or any other creditor – to seek discovery for the sole purpose of evaluating the Commonwealth plan of adjustment and the disclosure statement. Seeking such discovery now, while the stay entered by the Court in July 2019 and extended through December 31, 2019 is still in place, would contravene the Court’s stated purpose of “avoid[ing] piecemeal litigation of potentially overlapping key issues, . . . identify[ing] efficiently the issues that must be litigated or otherwise resolved to achieve confirmation of a plan of adjustment for the Commonwealth, . . . [and] prioritiz[ing] such issues and develop[ing] efficient approaches to the resolution of such issues.” *Order Regarding Stay Period and Mandatory Mediation* (Dkt. No. 8244), at 1; *see also* Motion to Strike ¶ 27.

14. As set forth in detail in Ambac’s recent objection to the Motion to Strike (Dkt. No. 9409), Ambac disagrees with the Oversight Board’s position and believes that there is no legal support for the proposition that the filing of a proposed plan of adjustment to which objections are anticipated renders Rule 2004 unavailable to the extent the information sought could have relevance to creditors’ evaluation of the proposed plan. In Ambac’s view, the core purpose of Rule 2004 discovery is to enable parties-in-interest to understand the “liabilities and financial condition of the debtor,” Fed. R. Bankr. P. 2004(b), so that they can meaningfully assess the proposed treatment of their claims. As with the cash- and asset-related information at issue in the Motion to Strike, Ambac contends that access to the information sought by the Supplemental

Pensions Requests is critical to creditors' ability to participate constructively in the process of advancing the Commonwealth's Title III case toward a successful plan of adjustment.

15. Briefing on the Motion to Strike will conclude on December 10, 2019.

16. Thus, the Parties believe that a further adjournment of the hearing on the Pensions Discovery Motions to the omnibus hearing scheduled for January 29, 2020 is appropriate. The Parties have filed, concurrently with this Joint Status Report, a joint motion requesting an adjournment of the hearing on the Pensions Discovery Motions to the omnibus hearing scheduled to take place on **January 29, 2020**.

*[Remainder of Page Intentionally Left Blank]*

Dated: December 6, 2019  
San Juan, Puerto Rico

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**CERTIFICATE OF SERVICE**

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

/s/ Roberto Camara-Fuertes

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